

This letter discusses sales for resale and claims for credit. See 86 Ill. Adm. Code Sections 130.210, 130.1405 and 130.1501. (This is a GIL.)

October 19, 2005

Dear Xxxxx:

This letter is in response to your letter dated August 10, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

My client ABC requests a private letter ruling pursuant to Illinois Regulation, 2 Ill. Adm. Code 1200.110 regarding its obligation to collect and remit sales tax under terms of the Retailers Occupational Sales and Use Tax Act, Illinois Regulation, 86 Ill. Adm. Code 130.1960 for sales made to XYZ.

XYZ is part of the FUND and has been advised by counsel that they are not a retailer under the terms of the Employment Retirement Securities Act of 1974, Section 514 (a).

While they may not be a retailer under the terms of the Employment Retirement Securities Act of 1974, Section 514 (a), we believe that under 35 ILCS 120/1, XYZ's sales meet the definition of sales at retail in part, "Sales at retail means any transfer of the ownership or title to tangible personal property to a purchaser, for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased."

Prior to XYZ's advice by counsel the [sic] had consistently provided ABC with Blanket Certificates of Exemption, stating that all items purchased from ABC were being purchased for resale and not for their own use.

ABC is strictly a pharmaceutical wholesaler and makes no sales at retail. Per conversations I have had with Deputy General Counsel for the Illinois Department of Revenue, wholesalers who engage in no resale activities may maintain other evidence of exemption in circumstances similar to ours.

Please confirm your understanding of the facts as I have presented them. Furthermore is ABC entitled to refunds of taxes paid on behalf of ABC for all periods open under statute?

Your time and consideration are greatly appreciated. Please feel free to call me with any questions or concerns you may have.

## **DEPARTMENT'S RESPONSE**

The requirements for a Private Letter Ruling as set forth in 2 Ill. Adm. Code 1200.110 are very specific. We do not have enough information from you to respond with a Private Letter Ruling. We hope that the following general information will be helpful.

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making sales to a wholesaler or retailer who will in turn sell that tangible personal property. See 86 Ill. Adm. Code 130.210 and 130.1405.

Except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. See 86 Ill. Adm. Code 130.1405 regarding requirements for a Certificate of Resale.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. The risk run by the seller in accepting such a certification and the risk run by the purchaser in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by the seller as evidence that the particular sale was, in fact, a sale for resale.

Claims for credit and refunds are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. See 86 Ill. Adm. Code 130.1501. If a retailer collects and remits to the Department tax on an item that should have been exempt as a sale for resale or under some other exemption, the retailer may file a claim for credit. This is true even if a valid Certificate of Resale or other exemption certificate is provided for items after the initial purchase and after tax has been paid. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit

unless the claimant clearly establishes that he or she has unconditionally repaid the amount of the tax to the person from whom he has collected the tax.

The language of the administrative rule concerning the statute of limitations is somewhat confusing but, basically, it means that the statute of limitations is 3 to 3 1/2 years and it expires in six month blocks. See 86 Ill. Admin. Code 130.1501(a)(4). Currently, claims may be filed to recover taxes which were erroneously paid on or after January 1, 2002. However, on July 1, 2005, the statute will expire for the first six months of 2002. On July 1, 2005, claims may be filed to recover taxes which were erroneously paid on and after July 1, 2002. In the context of your situation, any claim to recover taxes which were erroneously paid during the first six months of 2002 must be filed on or before June 30, 2005.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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